

spectrum. Accordingly, the Commission's transition period is illusory at best.^{22/}

VIII. REIMBURSEMENT MUST BE MEANINGFUL AND REALISTIC

A. Reimbursement

35. At paragraph 26 of its NPRM, the Commission proposes to allow providers of new service in the reallocated spectrum "to negotiate financial arrangements with existing licensees." Such action would, the Commission believes, "encourage re-accommodation and underwriting of the costs of transition for the 2 GHz users." If the Commission decides to reallocate the subject frequency band, compensation must be mandatory in the case of electric utilities in order to protect ratepayers.

36. The provision of and charges for electricity is a highly regulated endeavor. Because of the high degree of regulation, any costs incurred by the electric utilities to vacate their currently reliable and economically efficient 2 GHz facilities and migrate to other frequency bands or communications modes will probably result in those costs being passed on to ratepayers.^{23/} In these difficult economic times, it seems patently unfair to strap the

^{22/} Similarly, if migration is to happen immediately, the Commission's proposal that new licensees and incumbent licensees negotiate the cost of relocating incumbent licensees is meaningless. An electric utility licensee cannot tolerate a lengthy negotiation process before changing to another frequency assignment nor can it wait until some new technology provider initiates negotiations.

^{23/} In addition, higher rates passed on to commercial and industrial users of electricity could result in those users passing higher costs on to the consumer.

American consumer with higher electric rates so that speculative new communications services, which most electric consumers have never heard of or will never use, can attempt to be implemented.

37. If it is the new service provider that will reap the alleged financial benefit of any new service at the expense of existing users and the consuming public, then certainly that entity should be responsible for paying for that privilege. Such payment should be required for every electric utility, at any time, that it is forced to migrate from its current 2 GHz allocation. There should be no transition or cut-off period for this purpose. Simply put, if an electric utility licensee is forced to abandon a current 2 GHz operation, at any time, in favor of an emerging communications technology licensee, the new licensee must fairly compensate current users.

38. Specifically, reimbursement must be provided for: (a) transactional and administrative costs, such as for engineering, legal and filing fees; (b) consequential costs, such as for reconfiguration, re-engineering, and for construction of all additional sites and equipment affected; and, (c) incidental costs such as for higher site rentals, strengthening support structures, zoning, variance and building permits, renegotiation of leases and rights-of-way, and possible proceedings at the public utility and zoning commissions; and (d) continuing and residual costs, such as for maintenance and repair above and beyond current levels."^{24/}

^{24/} For example, if the electric utility licensee has to incur additional continuing and residual costs such as for
(continued...)

39. The Commission must take steps to insure that the electric utility licensee and its ratepayers do not bear the risk that compensation will not be received once the incumbent licensee has initiated the modification process in response to a request to abandon a 2 GHz frequency assignment. Consequently, the Commission should first require the entity desiring the electric utility licensee to vacate its assignment to make its reimbursement, in advance, by cash, bond, or escrow account. The amount of such payment should be sufficient to accurately reflect all costs involved. Second, the new provider's license should be conditioned upon full and continuing payment to the electric utility licensee for the involuntary modification.

40. Finally, the Commission should expressly permit the electric utility licensee to control, in a reasonable fashion, the timing of the switch-over to the alternative facilities. Only in this manner can the reliable and economical provision of electricity be maintained.

B. Tax Certificates

41. At footnote 17 of the NPRM, the Commission mentions the use of "tax certificates" in connection with compensation for encouraging the migration of existing 2 GHz licensees to "other non-radio alternative media." It is believed that the issuance of tax certificates to electric utilities is essential if those

^{24/} (...continued)
maintenance and repair, over and above those costs historically experienced, these costs should be covered because most increased costs will be passed on to the consumer either in the way of higher electric rates or increased prices for goods and services, or both.

electric utilities licensees are forced to migrate from existing 2 GHz allocations. Only in this manner can it be assured, to the extent possible, that ratepayers will not be burdened with potentially higher rates for electricity because of increased costs resulting from adverse tax consequences to the electric utility resulting from the negotiated relocation.

42. The Commission provides no basis as to why tax certificates should be granted only for migration to non-radio alternatives. The same tax certificates should be granted where an existing licensee receives compensation to migrate to a radio alternative. The migration is still taking place, and the incumbent licensees' costs are being reimbursed. Consequently, there appears to be no difference as to what alternative, radio or non-radio, the incumbent licensee chooses, and it seems to violate principles of fundamental fairness to propose tax certificates for one type of migration and not the other.

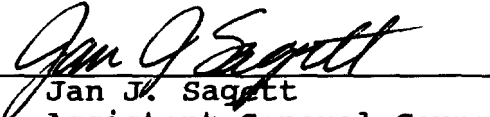
IX. CONCLUSION


43. Before the Commission takes any further action in this proceeding it must first: (a) carefully examine the potential impact of its proposal; (b) carefully examine the goals sought to be achieved; and, (c) fully explore realistic alternatives for achieving its goals.

WHEREFORE, THE PREMISES CONSIDERED, Edison Electric Institute respectfully requests the Commission to take further action in this proceeding consistent with the foregoing Comments.

Respectfully submitted,

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